United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: October 15, 2004

TO: Ralph R. Tremain, Regional Director
Region 14

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: St Louis Electric, et al.
Cases 14-CA-27644 and
14-CA-27820

530-6001-0000
177-1650-0000
177-1642-0000
177-1633-7500
440-1760-1501
524-3300-0000
524-3350-6000
530-6050-2575
601-5062-0000

This case arises out of the Union's bargaining relationship with an electrical contractor, McJac, and its alter ego, St. Louis Electric (SLE). It was submitted for advice on (1) whether the Union converted its previous Section 8(f) bargaining relationship with McJac to a 9(a) relationship; (2) whether SLE and another employer, Ruzicka, which supplied employees to SLE had a joint employer, single employer, or alter ego relationship, and what was the duration of that relationship; (3) what was the scope of the bargaining unit containing the leased employees; (4) whether McJac/SLE and Ruzicka violated Sections 8(a)(3), 8(a)(4) and 8(a)(5) when they failed to apply the McJac bargaining agreement to the leased employees and when SLE cancelled its commercial contract and ceased performing bargaining unit work when the Union filed charges attacking the failure to abide by the contract; (5) whether the corporate veil of McJac/SLE should be pierced to hold the owner liable; and (6) what are the legal ramifications of the personal bankruptcy filed by the owner upon the proposed remedies.

We conclude that (1) given our determination of other issues in this case, resolution of the Union's Section 9(a) representational status is not necessary; (2) SLE and Ruzicka had a joint employer relationship limited to the duration of the Patrick Henry project; (3) the bargaining unit consisted of the original employees of the alter ego of user employer SLE and the leased employees supplied by Ruzicka; (4) (a) McJac/SLE violated Sections 8(a)(3) and (5) by creating the alter ego SLE and failing to apply the contract to SLE employees at the Patrick Henry job and it violated Sections 8(a)(3), (4) and (5) by ceasing to perform on the Patrick Henry job in retaliation for

the Union's filing of charges over its prior conduct; (b) Ruzicka is also liable for these violations, albeit under different theories; (5) the remedy in these cases should not include piercing the corporate veil; and (6) given that the corporate veil should not be pierced, the legal ramifications of Jackson's personal bankruptcy upon the remedies are not at issue.

FACTS

In September 1993 James Jackson (Jackson), president and owner of McJac, signed a Letter of Assent agreeing to abide by the NECA collective bargaining agreement. The most recent NECA contract was effective through June 1, 2004. On May 14, 2002, the International Brotherhood of Electrical Workers, Local 1 (Union) sent McJac a recognition agreement seeking majority status under Section 9(a). In that letter, the Union offered to show McJac authorization cards to prove its majority status. The Union at the time possessed authorization cards from five of the nine McJac employees. However, three out of these five majority authorization cards are stale because they had been signed in the late 1990's. On May 22, 2002, Jackson signed and returned the Union's majority recognition agreement without requesting to see the Union's authorization card proof of majority status.

Approximately one year later, on April 21, 2003, Jackson ceased doing business as McJac and laid off its employees. On May 15, 2003, Jackson filed for personal Chapter 7 bankruptcy. Five days later, on May 20, 2003, Jackson incorporated St. Louis Electric (SLE). The Region has already concluded that SLE is the alter ego of McJac. On June 3, 2003, Jackson notified the Union that McJac was terminating its NECA letter of assent. The Union replied that McJac was still obligated to abide by the NECA agreement through its June 2004 expiration date, and that McJac also had an obligation to bargain with the Union for a successor contract.

Jackson apparently began planning the closing of McJac and incorporation of a new nonunion company as early as January 2003. At that time, Jackson contacted Tom Ruzicka, owner and president of Ruzicka Electric & Sons (Ruzicka).[1] Jackson complained to Tom Ruzicka about the quality of employees sent from the Union hiring hall, and stated he was interested in starting a new company with his daughter. Jackson asked Tom Ruzicka for referrals to an attorney and accountant. Tom Ruzicka referred Jackson to the two Ruzicka attorneys. When

[1] In 1999, the Union was certified as the representative of Ruzicka's employees. However, the Union has never entered into a collective-bargaining agreement with Ruzicka and Ruzicka does not hire union employees nor pay union wages.

Jackson incorporated SLE in May 2003, SLE had no contractual work, no employees, and no office workspace.

Around this time, Ruzicka had a contract to perform electrical work at the Patrick Henry project of K&S Associates. Ruzicka offered to allow SLE to take over Ruzicka's Patrick Henry project contract, using Ruzicka's current employees. On September 1, 2003, SLE entered into a formal written employee leasing relationship with Ruzicka. Under the terms of the leasing agreement, Ruzicka provided SLE with trained electricians; the employers jointly negotiated the wage rates for the leased employees; and SLE was responsible for the selection, firing, and daily on-the job supervision of the leased employees.[2] The terms of the agreement required SLE to pay Ruzicka a fee for the use of the leased employees and also required SLE to pay the leased employees' salary. However, SLE never paid the fee nor the employees' salary. Instead, Ruzicka waived collection of fee and paid the leased employees.[3]

Around August 21, 2003, SLE commenced work on Ruzicka's Patrick Henry project using Ruzicka's leased employees. SLE failed to apply the terms of the NECA agreement to the leased employees; rather, as noted supra, Ruzicka paid the employees at their normal nonunion rates. When the Union discovered SLE on the Patrick Henry project, the Union filed Section 8(a)(3) and (5) charges against McJac/SLE as alter egos alleging a discriminatory refusal to abide by the parties' NECA agreement.[4]

On November 18, 2003, three days after the Union filed the amended charge, SLE canceled its contract with K&S Associates. Jackson contends he cancelled the K&S contract because of vague concerns the project owner had about SLE's use of leased

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[2] In a letter to the City Inspector on the Patrick Henry job, SLE attorney Larry Kaplan stated the following: "St. Louis controls the work premises, assigns the work, directs the work, determines what tools and methods are to be used, uses its own work protocols, is responsible for accident/incident reports, signs off on time cards, and terminates employment of the leased employees."

[3] In addition to providing SLE with employees and the Patrick Henry contract without consideration, Ruzicka also provided SLE with free office space from August 2003 through November 2003. Despite the existence of a signed rental agreement, SLE never paid rent on the Ruzicka's office space and continues to use that space as its business address.

[4] The Union filed this initial charge on November 3, 2003. The Union subsequently amended that charge on November 13, 2003 to add Ruzicka as another Charged Party alter ego.

employees. However, Tom Ruzicka states that Jackson admitted to him that Jackson decided to end SLE's involvement in the Patrick Henry project because SLE's presence on the site might cause Ruzicka to become a party to SLE's dispute with the Union.[5] Ruzicka completed the Patrick Henry project in May 2004 using its own employees and also using Jackson as the project manager.

Since November 2003, SLE has ceased performing electrical contracting. Instead, SLE leased out Jackson's managerial skills to Ruzicka on other projects in addition to the Patrick Henry project. In April 2004, SLE reapplied as a minority contractor for work at the St. Louis Airport Authority. To date SLE has no employees other than James Jackson.

ACTION

1. Given our determination of other issues in this case, resolution of the Union's Section 9(a) representational status is not necessary

Although employers and unions in the construction industry may establish Section 9(a) majority relationships, the Board presumes, absent proof to the contrary, that construction industry bargaining relationships are nonmajority Section 8(f) relationships.[6] In Central Illinois,[7] the Board held that a recognition agreement would be

> independently sufficient to establish a union's 9(a) representation status where the language unequivocally indicates (1) the union requested recognition as the majority or 9(a) representative of the unit employees; (2) the employer recognized the union as the majority or 9(a) bargaining representative; and (3) the employer's recognition was based on the union's having shown, or having offered to show, evidence of its majority support.

In Nova Plumbing, however, where the Board applied this test to find a Section 9(a) relationship, the D.C. Circuit

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[5] Tom Ruzicka also explained to K&S Associates that SLE had terminated its contract because the Union had filed Board charges referring to Ruzicka as a potential alter ego.

[6] John Deklewa & Sons, 282 NLRB 1375 (1987), enfd. sub nom Iron Workers Local 3 v. NLRB, 843 F.2d 770 (3rd Cir. 1988); H.Y. Floors & Gameline Painting, 331 NLRB 304 (2000).

[7] Staunton Fuel & Material Inc. d/b/a Central Illinois Construction, 335 NLRB 717 (2001).

Court declined to enforce the Board's order because unrebutted evidence contradicted the parties' contractual assertions.[8]

Jackson signed the Union's 9(a) recognition agreement in May 2002 without requesting proof of majority status. However, the Union did not have actual majority support at the time of Jackson's signing. Three out of the five majority authorization cards were signed in the late 1990's. These three cards would be considered stale for a Board election.[9] Thus, the Union's claim for 9(a) representational status is problematic under Central Illinois, Nova Plumbing and Casale Industries[10].

Nova Plumbing is factually distinct from the case at hand. However, the D.C. Circuit in Nova Plumbing held that contractual language and intent alone are not sufficient to form a 9(a) relationship, but instead should be viewed as relevant factors in determining the representational status of a Union.[11] Although the Union may have a 10(b) argument under Casale, it is unclear to what extent the D.C. Circuit's view in Nova Plumbing would affect the Board's holding in Casale Industries.[12]

Given the tension between Central Illinois and Nova Plumbing, the uncertainty of Casale Industries, and the fact that SLE has ceased performing bargaining unit work and was otherwise bound to the terms of the NECA contract though the completion of the Patrick Henry project in May 2004, it is unnecessary to litigate the nature of the relationship between McJac/SLE and the Union. For whether it is 9(a) or 8(f) the

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[8] Nova Plumbing, Inc. v. NLRB, 330 F.3d 531 (D.C. Cir. 2003), denying enf. 336 NLRB 633 (2001). The Court noted that when the employer had recognized the union, employees had emphatically expressed opposition to union representation. The Court thus concluded that the presumption that the employer had granted only 8(f) representation had not been overcome by the recognition agreement language. 330 F.3d at 537.

[9] Blane-Tribune Publ'g Co., 161 NLRB 1512 (1966).

[10] Casale Industries Inc., 311 NLRB 951 (1993). Casale held "in nonconstruction industries, if an employer grants Section 9 recognition to a union and more than 6 months elapse, the Board will not entertain a claim that majority status was lacking at the time of recognition." 311 NLRB 951, 953.

[11] 330 F.3d 531, 537.

[12] See 300 F.3d at 538-539.

Employer has an 8(a)(5) obligation and the Union limited 9(a) representative status for the duration of the contract.[13]

2. Relationship between SLE and Ruzicka

a. Joint employer

SLE and Ruzicka are joint employers of the leased employees on the Patrick Henry Project.[14] Two or more entities are joint employers of a single workforce if "they share or codetermine those matters governing the essential terms and conditions of employment."[15] A joint employer finding may arise in an "employee-leasing context where the employer to which the employees are leased meaningfully affects such matters relating to the employment relationship as hiring, firing, discipline, supervision, and direction."[16]

Under the parties' leasing agreement SLE and Ruzicka jointly determined the rate that the leased employees were to receive from SLE. SLE had the ability to select the leased employees it deemed fit for the job, and fire the leased employees at will. SLE was also responsible for the daily supervision of the leased employees at the project, directed the employees in what tools and methods to use, signed off on time cards, and instituted its own work protocol on the jobsite. Thus, SLE meaningfully affected some essential terms and conditions of employment of the leased employees.

Ruzicka who had been the sole employer of these employees continued to maintain a meaningful relationship with them and codetermine essential employment conditions. Ruzicka not only negotiated their salary and other conditions of employment

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[13] Deklewa, 282 NLRB at 1386-1387. If McJac/SLE performs bargaining unit work in the future, and the Union believes McJac/SLE is obligated to deal with it, the Union may file a charge at that time.

[14] SLE and Ruzicka are not joint employers of the Ruzicka employees working outside the Patrick Henry project. Although SLE is now leasing Jackson's managerial services to Ruzicka, SLE does not codetermine the essential terms of employment for these Ruzicka employees and Jackson is no more than an on-site manager.

[15] NLRB v. Browning-Ferris Industries, 691 F.2d 1117 (3rd Cir. 1982).

[16] Branch International, 327 NLRB 209, 219 (1998). See TLI, Inc., 217 NLRB 798 (1984).

jointly with SLE, it also continued to pay the employees while they worked on the Patrick Henry project. SLE did not live up to its contractual obligations and neither paid the employees directly, nor paid Ruzicka for their use. Clearly, for the life of the Patrick Henry project, SLE and Ruzicka were joint employers.[17]

b. Single employer/alter ego

Ruzicka and SLE are not a single employer entity of the leased employees. A single employer relationship exists "where two nominally separate entities are actually part of a single integrated enterprise so that, for all purposes, there is in fact only a 'single employer'."[18] A single employer relationship is characterized by lack of arm's length transactions.[19] The Board considers four factors when determining whether two employers are so integrated that they are in fact a single employer: 1) functional integration; 2) centralized control of labor relations; 3) common management; and 4) common ownership or financial control.[20]

Similarly, the Board generally will find alter-ego status where two entities have "substantially identical" management, business purpose, operations, equipment, customers, and supervision and ownership.[21] While not all these indicia need be present, the Board generally will not find an alter-ego relationship in the absence of common or related ownership between the two entities.[22]

As noted above, SLE and Ruzicka were electrical contractors jointly employing certain employees on the Patrick Henry project. SLE and Ruzicka otherwise were independent, unrelated corporations before this joint employment. SLE is not functionally integrated into the Ruzicka corporation; SLE and Ruzicka do not share centralized control of labor relations; and SLE and Ruzicka have separate management. There also is

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[17] See Branch International, supra, 327 NLRB at 209.

[18] NLRB v. Browning-Ferris Industries, supra, 691 F.2d at 1122.

[19] Blumenfield Theaters Circuit, et al., 240 NLRB 206, 215 (1979).

[20] Naperville Ready Mix, 329 NLRB 174, 179 (1999).

[21] Crawford Door Sales, 226 NLRB 1114 (1976).

[22] Superior Export Packing Co., 284 NLRB 1169, 1170 (1987), enfd. 845 F.2d 1013 (3rd Cir. 1988).

absolutely no common ownership or financial control between SLE and Ruzicka.

Thus, these employers are more appropriately viewed as joint employers of Ruzicka's Patrick Henry project employees. It is logically inconsistent to conclude that the same parties can have both a joint employer and a single employer/alter ego relationship. A single employer/alter ego relationship arises where two nominally separate entities are actually part of a single integrated enterprise so that, for all purposes, there is in fact only a single employer. In contrast, a joint employer relationship does not involve a single enterprise, but rather two legally separate entities, that have merely chosen to jointly handle certain aspects of their employer-employee relationships.[23]

3. Appropriate Bargaining Unit

We recognize that Ruzicka's employees had been represented by the Union in their own separate unit certified in 1999. However, it is clear that Ruzicka thereafter lawfully leased its employees out of its sole employ and into SLE's joint employ. We therefore conclude that these employees became part of the SLE bargaining unit.[24] Thus, the appropriate bargaining unit of employees covered by the McJac/SLE bargaining agreement with the Union consists of McJac's original employees[25] and the employees leased by Ruzicka to SLE on the Patrick Henry project.

4. Violations

a. McJac/SLE's liability for the creation of alter ego SLE, failure to apply the McJac contract at the Patrick Henry job, cancellation of the Patrick Henry job

The Region has already determined that McJac and SLE are alter egos. Based on the timing and the other circumstances surrounding the creation of SLE, the evidence is clear that Jackson/McJac created alter ego SLE, and used Ruzicka's employees, for the purpose of avoiding McJac's relationship and bargaining agreement with the Union. Although McJac ceased performing unit work on April 21, 2003 and SLE was initially incorporated on May 20, 2003, the creation of alter ego SLE to avoid McJac's bargaining agreement was not fully effectuated

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[23] Clinton's Ditch Coop. Co. Inc., 778 F.2d 132 (2nd Cir. 1985).

[24] See generally U.S. Pipe & Foundry Co., 247 NLRB 139 (1980) (employees from supplier employer jointly employed by user employer became part of user employer's unit).

[25] These employees were lawfully laid off on April 21, 2003.

until August 21st, when SLE began performing bargaining unit work outside the Union bargaining agreement and without recalling McJac's former employees or using the hiring hall. McJac/SLE violated Sections 8(a)(3) and (5) by creating the alter ego and failing to abide by the collective bargaining agreement when it resumed work on August 21, 2003.[26] The IBEW filed its initial charge on November 3, 2003. Accordingly, we concluded that these allegations are not barred by 10(b).

SLE has admitted that it canceled its contract with K&S Associates and ceased performing bargaining unit work on the Patrick Henry project on November 18, 2003, in direct response to the amended Union charges filed five days earlier on November 13. Despite the cancellation of the Patrick Henry project, SLE has not ceased operations and continues to hold itself out to the public an ongoing contractor. As recently as April 2004, SLE reapplied as a minority contractor for work at the St. Louis Airport Authority. SLE is operative and its stated reason for the cessation of work and dismissal of employees from the Patrick Henry project was due to the filing of Board charges. SLE's discriminatory cessation of the Patrick Henry project therefore violated 8(a)(3) and 8(a)(4) of the Act.[27] SLE's discriminatory cessation was also done unilaterally without bargaining with the Union and thus also violated Section 8(a)(5).[28]

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[26] See, e.g., Mar-Kay Cartage, 277 NLRB 1335, 1342 (1985) (employer found to have violated 8(a)(3) and (5) of the Act by ceasing operations of company with collective bargaining agreement then creating a non-union alter ego company utilizing leased employees for purposes of avoiding bargaining obligations); Branch International Services, Inc., 327 NLRB 209 (1998).

[27] See, e.g., Lee's Shopping Center, Inc., 198 NLRB 507 (1972) (8(a)(3) partial cessation of operations because of union); First National Bank and Trust Co., Inc., 209 NLRB 95 (1974) (8(a)(4) discharge for filing Board charge). SLE does not have a viable defense under Darlington because it did not permanently and completely cease operations. Textile Workers Union of America v. Darlington Manufacturing Co., 380 U.S. 263, 273-74 (1965). See Contris Packing Co., Inc., 268 NLRB 193 (1983) (Board dismissed 8(a)(4) charges because employer permanently ceased plant operations in response to Board charges).

[28] First National Maintenance Corp. v. NLRB, 452 U.S. 666, 682 (1981). As noted above, given the unsettled state of Staunton Fuel and the fact that McJac/SLE has not performed bargaining unit work since the contract expired, we find it unnecessary to determine whether McJac/SLE has a continuing bargaining obligation at this time.

i. b. Ruzicka's liability for SLE's violations

A joint employer may be found liable for the violations committed by its co-joint employer. In Capitol EMI,[29] the Board held that both employers in a user-supplier joint employer relationship may violate Section 8(a)(3) even if only one of the joint employers took the discriminatory action:

> when the record permits an inference (1) that the nonacting joint employer knew or should have known that the other employer acted against the employee for unlawful reasons and (2) that the former has acquiesced in the unlawful action by failing to protest it or to exercise any contractual right it might possess to resist it.[30]

Similarly, in American Air Filter,[31] the Board found that the user employer AAF had sufficiently injected itself into its supplier employer's bargaining relationship that AAF also became bound to that bargaining relationship, and thus violated Section 8(a)(5) when it unilaterally subcontracted out unit work.[32] In American Air Filter, the employer with the collective bargaining obligation was the supplier employer, and in our case the user employer has the bargaining relationship. We see no reason to conclude, however, that this factual distinction undermines the Board's rule in American Air Filter, that a joint employer is bound by its joint employer's bargaining obligation where that joint employer injected itself into the bargaining relationship.

Under these principles Ruzicka is jointly liable for SLE's failure to abide by the McJac bargaining agreement. Ruzicka, as a joint employer, clearly knew of SLE's actions and injected itself into the bargaining relationship between McJac/SLE and the Union. Ruzicka entered the joint employer relationship with

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[29] Capitol EMI Music, 311 NLRB 997 (1993).

[30] Id. at 1000.

[31] American Air Filter, 258 NLRB 49, 53 (1981). See also Whitewood Oriental Maintenance, 292 NLRB 1159, 1169 (1989).

[32] The ALJ in American Air Filter noted: "AAF participated in collective bargaining [with the union and the supplier employer] and attempted to obtain the most favorable terms possible. Only at the conclusion of the collective bargaining process, when it determined that the terms were disadvantageous did it sever its ties with [supplier employer]. In these circumstances . . . AAF has a mandatory obligation to bargain when it subcontracts out . . ." Id at 54.

SLE knowing that SLE's predecessor, McJac, had a bargaining obligation with the Union and that SLE was trying to escape its bargaining obligations. Ruzicka supplied non-union employees for SLE's use as well office space and the Patrick Henry contract, all without consideration. Ruzicka also completed the canceled Patrick Henry project using its own employees after SLE canceled its contract. Ruzicka was thus an active partner in SLE's transactions designed to avoid SLE's bargaining obligations. Ruzicka is sufficiently involved in SLE's bargaining relationship at the Patrick Henry project to be held jointly liable for SLE's violations in failing to abide by the terms and conditions of the NECA agreement. For the same reasons, we conclude Ruzicka is also liable for SLE's discriminatory and unilateral cessation of work at the Patrick Henry project.

5. Piercing SLE's corporate veil

James Jackson should not be held personally liable for the unfair labor practices of McJac and SLE. In White Oak Coal,[33] the Board concluded that the corporate veil may be pierced when 1) the shareholder and corporation have failed to maintain separate identities and 2) adherence to the corporate structure would sanction fraud, promote injustice, or lead to the evasion of legal obligations.[34]

This case may involve some commingling of Jackson's personal funds and McJac's corporate funds. For example, Jackson personally guaranteed McJac's line of credit and paid for some purchases for the business, which may not have been reimbursed. McJac's corporate records indicate that McJac paid for Jackson's personal bankruptcy attorney, although Jackson [Exemptions 6, 7(C) and (D)] he initially consulted with the attorney about the advisability of corporate as well as personal bankruptcy. Corporate records also indicate McJac paid Jackson's federal and state taxes. However, Jackson averred in

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[33] White Oak Coal Co., 318 NLRB 732 (1995).

[34] Id. at 732. Among the factors the Board will consider in assessing if corporation and shareholder have maintained separate identities are: 1) whether the corporation is operated as a separate entity; 2) the commingling of funds and other assets; 3) failure to maintain adequate corporate records; 4) nature of corporations ownership and control; 5) availability and use of corporate assets or undercaptialization; 6) use of corporate form as a mere shell of individual or another corporation; 7) disregard of corporate legal formalities; 8) diversion of corporate funds to noncorporate purposes; and 9)transfer or disposal of corporate assets without fair consideration. Id. at 735.

bankruptcy court that he personally paid his taxes. Jackson also caused the transfers of McJac's licenses to SLE without consideration. We do not, however, regard the weekly salary of $1,400.00 drawn by Jackson for the relatively short period after McJac ceased performing operations and before SLE began work on the Patrick Henry project as a siphoning of funds. Moreover, there is no evidence here, as in White Oak, of use of corporate funds for purely personal purposes. In White Oak the corporate owners issued checks to their church, purchased furniture for their trailer, paid their individual DMV fees and renew the owner's membership in the International Hot Rod Association.[35] In these circumstances, we do not find that the Jackson's failure to strictly adhere to corporate formalities with McJac and SLE rises to the level of complete disregard of the corporate entity as found in White Oak. Additionally, SLE does not appear to have been undercapitalized given its small size in the construction industry.[36] We note that Jackson acting as president and manager of McJac/SLE personally participated in the unlawful conduct that lead to the current violations. However, since there otherwise was no failure to maintain separate shareholder and corporate identities, we conclude that this provides an insufficient basis to pierce the corporate veil.

6. Jackson's Chapter 7 Bankruptcy

Because we find that the corporate veil should not be pierced, and Jackson should not be held personally liable for the pending unfair labor practices, this case does not involve the legal ramifications of Jackson's personal Chapter 7 bankruptcy proceedings on the remedy.

In sum, we conclude that (1) given our determination of other issues in this case, resolution of the Union's Section 9(a) representational status is not necessary (2) SLE and Ruzicka had a joint employer relationship limited to the duration of the Patrick Henry project; (3) the bargaining unit consisted of the original employees of the alter ego of user employer SLE and the leased employees supplied by Ruzicka; (4) (a) McJac/SLE violated Sections 8(a)(3) and (5) by creating the alter ego SLE and failing to apply the contract to SLE employees at the Patrick Henry job and it violated Sections 8(a)(3), (4) and (5) by ceasing to perform on the Patrick Henry job in retaliation for the Union's filing of charges over its prior conduct; (b) Ruzicka is also liable for these violations, albeit

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[35] Id. at 734.

[36] SLE was incorporated on May 15, 2003 and had $20,000.00 worth of capital by July 17, 2003.

under different theories; (5) the remedy in these cases should not include piercing the corporate veil; and (6) given that the corporate veil should not be pierced, the legal ramifications of Jackson's personal bankruptcy upon the remedies are not at issue. Accordingly, complaint should issue, absent settlement.

B.J.K.